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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 98-298

In the Matter of)
)
Assessment and Collection) MD Docket No. 98-200
of Regulatory Fees for)
Fiscal Year 1999)

NOTICE OF INQUIRY

Adopted: November 10, 1998 ; **Released:** December 4, 1998

Comment Date: 20 days after publication in the Federal Register

Reply Comment Date: 30 days after publication in the Federal Register

By the Commission:

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I. Introduction

1. By this Notice of Inquiry ("NOI"), the Commission begins a rulemaking proceeding seeking comments and suggestions for revising its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress requires it to collect for Fiscal Year ("FY") 1999.¹

II. Background

2. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities.² In our FY 1994 Report and Order,³ we adopted the Schedule of Regulatory Fees that Congress established and we prescribed rules to govern payment of the fees, as required by Congress.⁴ Subsequently, in our FY 1995, FY 1996, FY 1997 and FY 1998 fee Orders,⁵ we modified the Schedule to increase by approximately 93 percent, 9 percent, 21 percent, and 7 percent, respectively, the revenue generated by these fees in accordance with the amounts Congress required us to collect for FY 1995, FY 1996, FY 1997 and FY 1998. Also, in our FY 1995, FY 1996, FY 1997 and FY 1998 fee Orders, we amended certain rules governing our regulatory fee program based upon our experience administering the program in prior years.⁶

3. Section 9(b)(3), entitled "Permitted Amendments," requires that we determine annually whether additional adjustments to the fees are warranted, taking into account factors that are reasonably related to the payer of the fee and factors that are in the public interest. In making these amendments, we are to "add, delete, or reclassify services in the Schedule to

¹ 47 U.S.C. § 159(a).

² Id.

³ 59 FR 30984 (Jun. 16, 1994).

⁴ 47 U.S.C. § 159(b), (f)(1).

⁵ 60 FR 34004 (Jun. 29, 1995), 61 FR 36629 (Jul. 12, 1996), 62 FR 37408 (Jul. 11, 1997), and 63 FR 35847 (Jul. 1, 1998), respectively.

⁶ 47 CFR 1.1151 et seq.

reflect additions, deletions or changes in the nature of its services."⁷

III. Discussion

4. Pursuant to its FY 1998 Notice of Proposed Rulemaking ("NPRM"),⁸ the Commission received comments from interested parties concerning its proposed "permitted amendments" to the fee schedule. However, the Commission rejected some and was unable to resolve several other of the commenters' proposals in time for inclusion in its FY 1998 Report and Order,⁹ due to the statutory 90-day advance notice required by Congress.¹⁰ Further, in its FY 1998 Report and Order, the Commission stated its intention to issue this NOI requesting that interested parties comment on possible solutions to these unresolved issues.¹¹ Briefly, the issues for which we seek comment include: (1) clarification of the Commercial Mobile Radio Services ("CMRS") fee categories and demarcation of which types of services or usage to include in each category; (2) determination of the appropriate basis for assessing regulatory fees on geostationary orbit space stations ("GSOs"); (3) determination of the appropriate method of assessing our regulatory costs associated with non-geostationary orbit space station systems ("NGSOs") to licensees which have launched satellites or to all NGSO licensees; (4) whether we should base revenues for interstate telephone service providers on the Universal Services Fund's end user methodology rather than the Telecommunication Relay Services Fund adjusted gross revenue methodology; and (5) whether we should create a "new services" category in our cost accounting system in which costs associated with development of new services, regardless of the service, would be proportionately assessed to all feeable categories rather than assessed to existing licensees in the same service category.

a. Commercial Mobile Radio Services ("CMRS")

5. For FY 1998, CMRS licensees authorized for operation on broadband spectrum¹² are subject to payment of the CMRS Mobile Services fee¹³ and licensees authorized for operation

⁷ 47 U.S.C. § 159(b)(3).

⁸ 63 FR 16188, (Apr. 2, 1998).

⁹ 63 FR 35847, (Jul. 1, 1998).

¹⁰ 47 U.S.C. § 159(b)(4)(B).

¹¹ See FY 1998 Report and Order at ¶¶ 48, 53, 55, and 67.

¹² Includes specialized mobile radio services (part 90), personal communications services (part 24), wireless communications services (part 27), public coast stations (part 80), and public mobile radio stations (cellular radio, 800 MHz air-ground radiotelephone, and offshore radio services (part 22)). See FY 1998 Report and Order at Attachment H, ¶ 14.

¹³ For FY 1998, this fee is \$0.29 per feeable unit. See FY 1998 Report and Order at Attachment F.

on narrowband spectrum¹⁴ are subject to payment of the CMRS Messaging Services fee.¹⁵ Our fee schedule considers the nature of the services offered only to the extent that services offered on broadband spectrum and services offered on narrowband spectrum are subject to different categories of fee payment. In our FY 1998 NPRM, we invited interested parties to comment on our proposal to continue this fee structure for CMRS services.

6. Several parties filed comments, in particular, concerning the demarcation between the CMRS Mobile Services and CMRS Messaging Services fee categories. SBC Communications Inc. ("SBC") urged us to adopt only a single CMRS fee covering all CMRS services, contending that both Congress and the Commission intended to create regulatory symmetry among the CMRS services, and, thereby avoid any competitive advantage to narrowband personal communication service ("PCS") and specialized mobile radio ("SMR") service over cellular and broadband PCS.¹⁶ In contrast, Paging Network, Inc. ("Pagenet") supported retention of the existing fee category structure, but recommended adoption of a subcategory for non-voice networks and services within the CMRS Mobile Services fee category which would be subject to the same fee payment as licensees within the CMRS Messaging Services fee category.¹⁷ Pagenet argued that there are significant differences in network efficiency and the level of Commission regulation required between voice and non-voice operations such that non-voice services are being charged a disproportionate share of the CMRS Mobile Services costs.

7. BellSouth Wireless Data ("BellSouth WD") suggested that 900 MHz SMR licensees should be classified in the CMRS Messaging Services fee category, and not in the CMRS Mobile Services fee category in which 900 MHz SMR licensees are currently classified.¹⁸ BellSouth WD argued that regulatory fees should be governed by how the service bands are predominantly used on a licensee by licensee basis. BellSouth WD stated that the Commission has allocated 5 MHz of spectrum in each geographic region for 900 MHz SMR systems and that, in practice, this spectrum is licensed in 20 blocks, each consisting of 10 two-way 12.5 kHz paths, or 0.25 MHz per 10-channel block. Further, BellSouth WD contended that 900 MHz SMR systems do not have the capacity to compete with true

¹⁴ Includes licensees formerly licensed as part of the private radio services (private paging, qualifying interconnected business radio services, and 220-222 MHz land mobile systems (part 90)), and licensees formerly licensed as part of the common carrier radio services (public mobile one-way paging (part 22)) and licensees of personal communications services (one-way and two-way paging (part 24)). See FY 1998 Report and Order at Attachment H, ¶ 15.

¹⁵ For FY 1998, this fee is \$0.04 per feeable unit. See FY 1998 Report and Order at Attachment F.

¹⁶ See Comments of SBC Communications, Inc. at p. 7.

¹⁷ See Comments of Paging Network, Inc. at p. 2.

¹⁸ See Comments of Bellsouth Wireless Data, L.P. at p. 2.

broadband systems, lacking the amount of spectrum of those services included in the CMRS Mobile Services fee category. Thus, BellSouth WD suggested that either we include any authorization providing 25 kHz or less spectrum in the CMRS Messaging Services fee category, or we establish a third CMRS fee payment category for systems that operate in the 900 MHz SMR band and other CMRS services that are allocated no more than 5 MHz of spectrum. American Mobile Telecommunications Association ("AMTA") supported BellSouth WD's proposal.¹⁹

8. Small Business in Telecommunications ("SBT") argued that, because we classify narrowband PCS, which operates on 50 kHz paired channels, in the CMRS Messaging Services fee category,²⁰ we should clarify that all CMRS stations which are authorized with channel bandwidth not exceeding 50 kHz are within the CMRS Messaging Services fee category. Moreover, SBT contended we should clarify that SMR systems and public coast stations are within the CMRS Messaging Services fee category since these stations are authorized with substantially less channel capacity than narrowband PCS stations.²¹

9. We must be able to determine, or estimate with some degree of precision, the number of feeable units that are within each fee payment category and be able to determine the pro rata share of our regulatory costs that must be assessed per feeable unit. We are not aware of any existing records or other sources of information that would permit development of any of the proposals offered by the commenters as summarized above. Therefore, we seek comments on these and solicit any other proposals to revise the methodology the Commission uses to determine its CMRS fee categories. Further, we ask that all comments on the above and any new proposals include data (or available sources for data) that would enable the Commission to definitively assign each type of service to the appropriate proposed fee category and provide an estimate of the number of feeable units contained in each category for FY 1999.

b. Space Stations

i. Geostationary Orbit Space Stations ("GSOs")

10. In the past, we have adopted the statutory fee schedule's "per satellite" method for assessment of fees upon licensees of geostationary (GSOs) space stations. 47 U.S.C. § 159(g). The calculation of annual regulatory fees for GSOs has however been a matter of dispute for several years during which proposals for alternate methods of calculation have been presented. Therefore, we are seeking alternative methods of calculating fees based on different criteria and/or information from affected parties. We ask commentors to suggest alternative methods for assessing regulatory fees for GSO space stations. Along with

¹⁹ See Reply Comments of American Mobile Telecommunications Association, Inc. at pp. 2-4.

²⁰ See FY 1998 Report and Order at Attachment H, ¶ 15.

²¹ See Comments of Small Business in Telecommunications at pp. 5-6.

suggestions, we ask commentors to specify the data upon which we can base any alternative approach and the most feasible method for obtaining the data necessary to calculate fees.

ii. Non-geostationary Orbit Space Stations ("NGSOs")

11. In our FY 1998 Report and Order, we continued to require that NGSO licensees pay for NGSO systems by requiring a fee payment "upon the commencement of operation of a system's first satellite as reported annually pursuant to sections 25.142(c), 25.143(e), 25.145(g) or upon certification of operation of a single satellite pursuant to section 25.121(d)." In our FY 1998 proceeding, Orbital Communications Corporation ("ORBCOMM") contended that, because all NGSO licensees benefit from our policy, enforcement and information activities and services, the Commission should recover its NGSO space station regulatory costs from all NGSO licensees, rather than from only those that have launched their initial satellite.²² As we stated in our FY 1998 Report and Order, we are including ORBCOMM's proposal in this NOI and seek comment here on ORBCOMM's proposal, as well as alternative proposals.

c. Interstate Telephone Service Providers

12. For FY 1998 we adopted the methodology for assessing fees upon interstate telephone service providers that we had employed in past years. Under this methodology, interstate telephone service providers calculate their regulatory fees based upon their proportionate share of interstate revenues using the methodology we developed for contribution to the TRS Fund.²³ However, in order to avoid imposing a double fee payment upon certain interstate telephone service providers (e.g. resellers), we permit those interstate telephone service providers to remove, from their gross interstate revenue, payments made to underlying carriers for telecommunications facilities and services, including payments for interstate access services.

13. In our FY 1998 proceeding, SBC contended that our methodology imposes an undue burden upon the local exchange carriers ("LECs") because we permit interexchange carriers ("IXCs") to deduct payments made to underlying common carriers from their gross interstate revenues while LECs do not have such payments to deduct. SBC suggested that use of end user revenues - the same contribution base used for the Universal Service Fund - to calculate the annual fees would alleviate that burden and be more competitively neutral.²⁴

14. In our FY 1998 proceeding, we declined to adopt SBC's proposal. We disagreed with SBC's description that end user revenues are more competitively neutral than our current

²² See Comments of Orbital Communications Corporation at p. 3.

²³ See Telecommunications Relay Services, 8 FCC Rcd 5300 (1993).

²⁴ See Report and Order In the Matter of Universal Service, 62 FR 32861 (Jun. 17, 1997).

methodology. Specifically, assuming that all fees are recovered from customers, including customers of interstate telephone service providers that purchase their service for resale, retail customers would still pay the same rates. To the extent that services are provided in competition with other interstate telephone service providers, those interstate telephone service providers would pay the same percentage amounts when providing the same services to the same customers. Additionally, in the FY 1998 proceeding, we said we do not have adequate data to estimate total common carrier interstate end user revenue.²⁵

15. As we indicated in our FY 1998 Report and Order, we are revisiting SBC's proposal here. Thus, we ask the common carrier industry to comment on the feasibility of relying on end user revenues as provided to the Universal Services Fund, as opposed to net revenues based upon the TRS Fund. Further, we ask that commenters specify the data upon which we can base this or any other alternative approach and the most feasible method for obtaining this information.

d. Treatment of New Services in All Feeable Categories

16. In our FY 1998 proceeding, a number of payors of GSO fees argued that licensees in existing GSO satellite services unfairly bear the cost of our policy and rulemaking activities related to the development of rules and procedures for "new" GSO satellite services. They suggested that we create a separate regulatory category in our regulatory cost accounting system for "new services" where the Commission has not yet authorized a licensee. Regulatory costs associated with the development of policy and rules for such new services throughout the Commission would be charged to this cost category and distributed across all fee payors when calculating regulatory fee rates for any given fiscal year. Regulatory costs associated with these new services would be charged to the appropriate service, as they are now, upon the grant of the first authorization or license for that service.

17. In our FY 1998 Report and Order, we concluded that due to a tight collection schedule, as a practical matter, we had no viable alternative other than adoption of the fees as proposed in the NPRM, without any of the amendments proposed by commenters. However, as indicated in our FY 1998 Report and Order, we seek comment on this and other alternative approaches to our current regulatory fee cost recovery methodology for new and developmental services. Specifically, we seek comment on whether a regulatory category for "new services," which would impact payors in all services, should be added to our cost accounting system.

18. In addition, in our FY 1998 proceeding, some parties suggested that the Commission identify more clearly costs related to those activities intended to be covered by regulatory fees. We seek comment on whether and how we should further distinguish our costs, in particular those costs related to regulatory activities and ongoing regulation of licensees.

²⁵ See FY 1998 Report and Order at ¶ 67.

Further, we seek suggestions as to how we can ensure that the amounts collected are distributed properly among our fee categories.

IV. Procedural Matters

a. Comment Period and Procedures

19. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before [insert date 20 days after publication in the Federal Register], and reply comments on or before [insert date 30 days after publication in the Federal Register]. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

20. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply.

21. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

22. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Terry Johnson, Office of Managing Director, Federal Communications Commission, 445 12th St., S.W., Room 1-C807, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the lead docket number in this case MD Docket No. 98-200, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription

Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

23. Documents filed in this proceeding will be available for public inspection during regular business hours in the FCC Reference Center, of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, D. C. 20554, and will be placed on the Commission's Internet site."

b. Ex Parte Rules

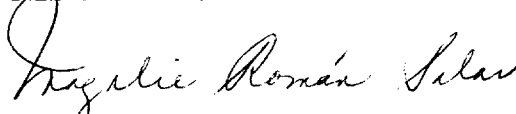
24. This is an NOI which is exempt from the ex parte rules, and presentations to or from Commission decision making personnel are permissible and need not be disclosed.²⁶

c. Authority and Further Information

25. Authority for this proceeding is contained in sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) - (j), 159, and 303(r). It is ordered that this NOI is adopted.

26. Further information about this proceeding may be obtained by contacting the Fees Hotline at (202) 418-0192, or you may e-mail your questions to mcontee@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

²⁶ 47 CFR 1.204(b)(1).